

COMPLIANCE BOARD OPINION NO. 94-10

December 2, 1994

Ms. Sally Williams Stern

The Open Meetings Compliance Board has considered your complaint of October 27, 1994, in which you asserted that the City Council of Cumberland had failed to comply with the Open Meetings Act in the process by which it decided to remove a Confederate flag from the rotunda of City Hall. Your complaint was premised on the assumption that the City Council had met to consider this matter.¹

The Open Meetings Act only applies when a public body is holding a "meeting." See §§10-505, 10-506 and 10-507 of the State Government Article, Maryland Code. The scope of the Act, therefore, can be no greater than the scope of the relevant definition: "'Meet' means to convene a quorum of a public body for the consideration or transaction of public business." §10-502(g). Generally speaking, a quorum is "a majority of the members of a public body." §10-502(k)(1). If no quorum of a public body has been convened, no "meeting" will have taken place. The Open Meetings Act does not require public bodies to meet; it simply establishes a series of legal requirements that a public body must follow when it does meet.

The facts of this matter suggest that no meeting of the Mayor and Council of Cumberland was convened to discuss the issue of the Confederate flag. In a timely response on behalf of the City Council, Cumberland City Solicitor H. Jack Price, Jr., stated as follows:

It is my understanding that a quorum of the Mayor and Council at no time participated in a telephone conference call or other form of meeting. Rather it is my understanding that as individuals, the members of the Mayor and Council advised the City Administrator ... that it

¹ Much of your letter to the Board set forth your views on the propriety of the decision to remove the flag. The Compliance Board does not comment on the merits of decisions made by public bodies. The Board's role is limited to an assessment whether a public body's method of decision-making violated the Open Meetings Act in any respect.

was their feeling that based upon concerns raised by members of the public, it would be appropriate to have the Confederate flag taken down from City Hall. The City Administrator having received a [con]sensus of opinion from the Mayor and Council then prepared for consideration by the Mayor and Council, a statement which was presented at the Mayor and Council meeting of August 16, 1994.

...

Simply stated, the Mayor and Council received a complaint, from the public regarding the Confederate flag. As individuals they addressed their concerns to the City Administrator, [and] the City Administrator based on those concerns prepared a statement to be given by the Mayor and Council in public session. The statement was discussed in a public work session prior to the public meeting where the statement was given.

A series of separate conversations between individual council members and the City Administrator is not a "meeting," because a quorum did not participate in those separate conversations. *See* Compliance Board Opinion No. 94-8, at 3 (October 26, 1994). As the Attorney General has written, "the Act does not apply to conversations between ... any two members of a public body having a membership greater than three." Office of the Attorney General, *Open Meetings Act Manual* 6 (1992).

The nature of the decision concerning the flag was evidently such that, under the City Charter and applicable practice, the Mayor and Council could make the decision through a consensus process not involving a meeting. The consensus in favor of the action having been discerned by the City Administrator from these individual discussions, the Mayor and Council then stated the decision at a public meeting.

The Compliance Board finds no violation of the Open Meetings Act in this sequence of events.²

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
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² In light of this conclusion, the Compliance Board need not address the contention of the Mayor and Council that "essentially housekeeping matters" fall outside the scope of the Open Meetings Act. *But see* Compliance Board Opinion No. 94-7 (August 16, 1994) (activity by public body that falls within none of the defined functions is within scope of Act).